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Office Memorandum • UNITED STATES GOVERNMENT

TO : ADSO

DATE: 22 October 1948

FROM : Assistant General Counsel AuthorizationsAdm & E 10/21/48

SUBJECT: Audit of Special Funds Expenditures for OSO

OGC Has Reviewed

1. Returned herewith is the memorandum to you from SFD, dated 13 September 1948. Attached thereto is the memorandum, dated 13 August 1948, from the Acting Chief, Audit Division, to the Director. You request the opinion of this office concerning the propriety of expenditures in the cases set forth in the attached memoranda.

2. Special Funds Regulations in force at the time of the payments in question provide:

"Travel expenses will be paid from Unvouchered Funds in the amount permitted by law and the Standardized Government Travel Regulations. No reimbursement will be made for items of expense not allowable under such regulations."

a. In a delegation of authority, dated 1 January 1947, the Director of Central Intelligence authorized you and your Executive Officer to approve the transfer and travel of civilian employees and the payment or reimbursement of all expenses incident thereto -

"within the limits of unvouchered funds allotted to the Office of Special Operations by the Projects Review Committee and in accordance with existing laws and regulations."

b. Section 7, Public Law 600, 79th Congress, approved 2 August 1946, provides, in effect that new appointees may be paid expenses of travel from places of actual residence at the time of appointment to places of employment outside the continental United States, and return expenses at the time of assignment to their actual residence at the time of assignment to duty outside the United States.

c. The Subsistence Expense Act of 1926 provides that employees may receive per diem allowances in lieu of subsistence while traveling on official business and away from their designated post of duty. Such per diem must be specifically authorized by a person to whom such authority has been delegated.

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3. Throughout the various Government agencies, questions have arisen from time to time involving interpretations of the cited provisions of law and regulations. In the event of doubt, a Certifying Officer is authorized to submit the voucher in question to the Comptroller General for an advance ruling on the propriety of the proposed payment. Many of these decisions were put in formal form and placed in bound volumes. The decisions of the Comptroller General are looked to for guidance by those Government agencies whose funds are subject to audit by the General Accounting Office. In view of the above, this office, in advising on the propriety of proposed payments or past payments, has looked to the Comptroller General's decisions for guidance in forming its opinions.

4. There are four cases in question, involving a total of \$1,968.79. The facts in each particular case are outlined below:

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a.

In this case, the amounts in question involve \$602.50 per diem during her training period in Washington, D.C., and \$70.29 for travel expenses from North Dakota to Washington, D.C. Miss was working in Washington, D.C., with the War Assets Administration from 30 September 1946 until 4 April 1947. Apparently, she had made application for employment with CIA prior to 4 April 1947. This is evidenced by her letter, dated 26 March 1947, in which she wrote to CIA that she was leaving on vacation for approximately two months. She furnished an address in North Dakota at which she could be reached in the event further information was desired in connection with her application. At the time she left Washington, D.C., she gave up her living quarters, and, upon her return, on 21 June 1947, she acquired new living quarters. Her EOD date with CIA was Subsequently, she was sent overseas by virtue of transfer action, dated 27 October 1947.

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b.

The amount of \$472.00, representing per diem paid by CIA, 25X1A6A is in question in the case of Her Per-

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and from that date until 31 March 1947, she received per diem in the amount of \$472.00. She departed from Washington, D.C., on 8 April 1947 for overseas duty.

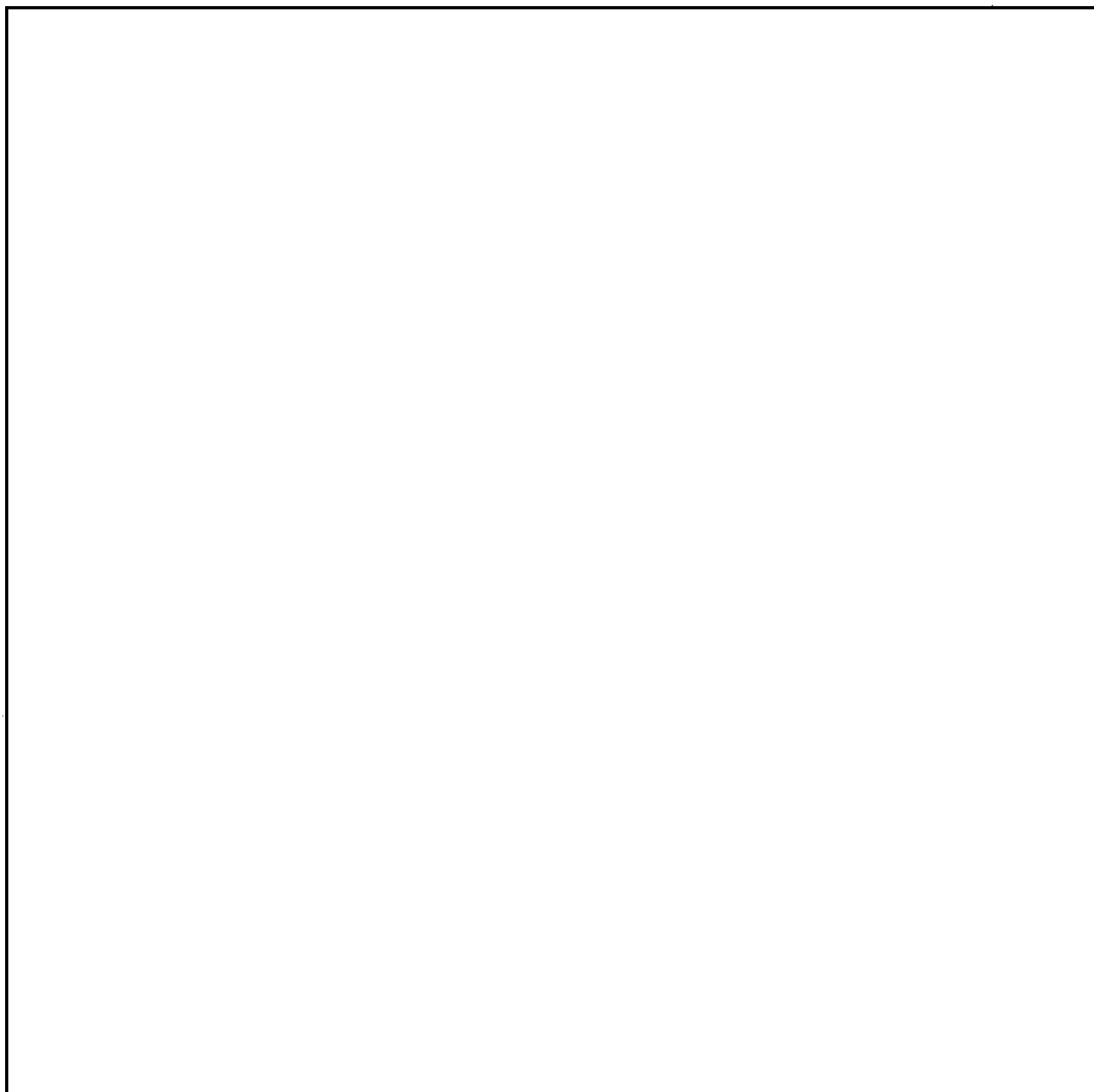
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5. The auditors have stated that it appears the actual residence of the four individuals at the time of appointment was Washington, D.C. If the actual residence were not in Washington, D.C., the questioned items would appear to be legal and proper payments. It would appear, therefore, that there are two basic questions to be answered.

a. What was the actual residence, at the time of appointment, of each of the four individuals?

b. If it is determined that the actual residence at the time of appointment was Washington, D.C., is the payment of per diem under such circumstances authorized?

6. In 26 Comp. Gen. 488, 15 January 47, the question was raised as to whether the term "actual residence", as used in Section 7 of

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Public Law 600, includes the "legal residence" or "domicile" of an employee who is appointed under the circumstances outlined in that specific case. The circumstances involved in that case concerned employees in the [] who had come there as children and could not be said to have had any actual residence in the United States at the time of their appointment. It was stated that the term "actual residence" generally would be understood to mean the place at which the appointee physically resided at the time of his appointment. It was then held that the term need not be so restricted under all circumstances, and that in a case of this type the term "actual residence" may be held to include the legal residence or domicile of such an employee. This principle, in so far as employees of the [] were concerned, was reaffirmed in 27 Comp. Gen. 567, 1 April 1948.

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a. In applying the above principles to the [] case, we find that she had no physical residence in Washington, D.C., at the time she was requested to report for duty, which should be regarded as the time of her appointment. Although her letter to this Agency stated she was going to North Dakota for a vacation, she had given up her residence in Washington, D.C. Consequently, it is our opinion that Washington, D.C., was not her actual residence at the time of her appointment with CIA.

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b. Based on the facts presented, it appears that Miss [] was physically residing or maintaining her place of abode in Washington, D.C., at the time of her appointment with CIA. Consequently, her actual residence at the time of appointment must be regarded as Washington, D.C.

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c. In the [] case, the facts indicate that, for the convenience of the Government, he was returned to Washington, D.C., for discharge rather than to the point of induction. The mere fact that he was returned to Washington, D.C., on a permanent change of duty order does not necessarily constitute Washington, D.C., as his actual residence. The PCD orders were required for separation purposes by the War Department, but eliminating the technical acts of the various agencies concerned, the facts clearly indicated that, as between the U. S. Government and the individual, a bona fide travel status was established. In applying the above-cited Comptroller General's decisions to the facts presented in this case, we do not feel that the term "actual residence" need be restricted to his physical presence at the time of appointment. In this case, it is our opinion that his legal residence in Hawaii may be considered his actual residence for the purposes of Section 7 of Public Law 600

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d. In the [] case, the facts presented indicate that she had been residing in Washington, D.C., since 1941, with

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in Washington, D.C. Therefore, it must be concluded that her actual residence at the time of appointment with CIA was Washington, D.C.

7. In considering the answer to the question presented in 5 (b) above, we must determine when per diem is payable. Per diem in lieu of subsistence may be paid, if authorized, where an employee is traveling on official business and away from his designated post of duty. Although per diem may be authorized, payment thereof may be made only if the authorization is consistent with applicable laws and regulations. As indicated above, the Comptroller General has issued many decisions interpreting such laws and regulations.

a. in 9 Comp. Gen. 233, 6 December 29, an employee was transferred from one post in the Government to another. Her official station at the first agency was Washington, D.C., and, upon transfer, she was directed by the new agency to remain in Washington, D.C., temporarily before reporting to her new official station. It was stated that no per diem was payable during such period of temporary duty in Washington, D.C., since the employee was not traveling on official business and apparently lived just as she had been living up to the time of her transfer. Consequently, the transfer did not operate to place her in a travel status so as to entitle her to subsistence or per diem in lieu thereof.

b. The basic facts in 11 Comp. Gen. 132, 13 October 31, consisted of the appointment of an employee who was required to perform temporary duty at his place of residence before reporting to his first post of duty. It was held that the temporary duty was performed at the place of residence of the employee at the time of his appointment, and he was not put to any additional expense by reason of such temporary duty. Accordingly, per diem for such period was disallowed.

c. The facts in 15 Comp. Gen. 624, 17 January 1936, are very similar to those in 11 Comp. Gen. 132, cited above. It was stated that where the employee enters upon duty at the place of appointment, a travel status entitling him to per diem in lieu of subsistence does not begin until he actually begins travel from that point.

d. The holding set forth in 9 Comp. Gen. 233 was reaffirmed in 20 Comp. Gen. 820, 27 May 1941. The facts in the two cases are substantially similar. It was held that there was no authority under which the employee could be paid per diem at his place of residence before entering upon a travel status.

e. The holdings of the Comptroller General's decisions cited above were again confirmed in 22 Comp. Gen. 869, 6 March 43. In this case, no transfer from one Government agency to another was involved. It was held that subsistence can not

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paid if the temporary duty required of the new employee is in the city of his residence, and therefore entails no extra expenses to be reimbursed. The previous cases were cited, and no apparent distinction was made between the cases where the employee is a new appointee to Government service, and those where he is transferred from one Government agency to another.

8. The memorandum from Special Funds, dated 13 September 1948, cites a number of Comptroller General's decisions which it advances as supporting the propriety of the payments involved.

a. In reviewing 19 Comp. Gen. 414, 2 October 39, it is noted that the Comptroller General held that payment of per diem to an employee in authorized travel status and otherwise entitled thereto was not precluded solely because the employee was assigned to temporary duty at a place which happened to be his home. The facts in this case are that the employee was directed to proceed from his official station in Chicago to Michigan City, Indiana, for temporary duty. The distance involved was approximately 54 miles, and it so happened that the employee maintained his residence in Michigan City and commuted daily to his official station. It was also stated in that decision that evidence of actual expenditures is not a condition precedent to the payment of per diem in lieu of subsistence to an employee shown to be in a bona fide travel status.

b. 10 Comp. Gen. 222, 15 November 34, is cited. This opinion is, in effect, a review of the opinion rendered in 10 Comp. Gen. 184, 24 October 30. Under such circumstances, where employees were directed to report to Washington for temporary duty prior to assignment to their duty stations, the Comptroller General held that, where the employee is required to perform temporary duty en route to his official duty station, he may be reimbursed for the additional subsistence and transportation expenses imposed on him by being required to proceed to some point other than his first official duty station. The employee was requested to report to Washington, D.C., and it does not appear that Washington was his residence. Subsequent to temporary duty in Washington, D.C., the employee was required to proceed to his first official duty station. 10 Comp. Gen. 184 and 224 were cited in support of the principles set forth in 22 Comp. Gen. 869, cited above.

c. It is advanced that the terms "temporary duty" and "travel status" are frequently used synonymously. 21 Comp. Gen. 591, 22 November 41, contains such a statement. The question to be determined in that case was whether or not the travel order which described the duty as "temporary" would be sufficient to enable payment of transportation expenses of the remains of the employee to be made where the regulations provide for such payment "while temporarily absent from duty during a period of travel on official business."

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9. A careful review of the cited Comptroller General's decisions has been made. The assistance of the Digest Section of the General Accounting Office was requested, and no other opinions were offered by them. In considering all of the pertinent decisions, it appears clear to this office that, where an employee is appointed at the place of his residence, whether that place be designated his official duty station or a temporary duty station, he would not be authorized to receive per diem in lieu of subsistence until he actually began travel from the place of appointment. The Comptroller General has held, in such circumstances, that travel could not begin until actual travel from that point was begun. Consequently, he is not in a bona fide travel status at the place of appointment. The statement that payment of per diem is not precluded solely because the temporary duty is at the place of residence of the employee is not sufficient to permit payment of per diem where the employee's residence is the place of appointment. The fact that the employee is required to remain temporarily at his place of appointment which is his residence prior to travel to his designated first post of duty does not place him in a travel status so as to entitle him to per diem at the place of appointment.

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a. Payments in the [] case, if otherwise appropriate, are, in the opinion of this office, in accordance with the Special Funds Regulations, since Washington, D.C., was not her place of residence at the time of appointment.

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b. In the [] case, the facts presented indicate her place of residence at the time of appointment as Washington, D.C. Therefore, it is our opinion that the \$472.00 paid to her for per diem from 19 December 1946 to 31 March 1947 was not in accordance with the Special Funds Regulations.

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c. Since [] actual residence at the time of appointment may be regarded as Hawaii, payments to him, if otherwise appropriate, are, in the opinion of this office, in accordance with Special Funds Regulations.

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d. From the facts presented, the actual residence of Miss [] at the time of appointment was Washington, D.C. Consequently, the per diem received by her while in Washington from the time of her appointment, 16 June 1947 to 3 September 1947, in the amount of \$344.00, is not in accordance with the Special Funds Regulations.

10. For the information and guidance of all concerned, we should like to make additional comments concerning these cases. In examining the records pertaining to the four cases, certain irregularities were noticed in the records.

a. It appears that, in at least one case, the employee was not furnished salary from the date travel began at the place of actual residence, but began 47 days later.

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after her arrival in Washington, D.C. In 24 Comp. Gen. 391, 18 November 1944, it was stated that, in the absence of a specific statutory provision to the contrary, a travel status usually connotes a duty status to which compensation attaches. This ruling was made in connection with a case where the Agency involved had authorization to pay expenses of the employee to the first post of duty abroad. The provisions were substantially similar to Section 7 of Public Law 600. Therefore, there should be considered appropriate procedures to ensure salary payments to employees in such circumstances from the beginning of their travel.

b. In all cases, transfer letters were issued indicating a transfer of official station from Washington, D.C., to the respective overseas stations. Such procedure is obviously incorrect. Current S.O. orders prescribe appropriate procedures in such cases.

No legal objection has been taken to the payments on the basis of the irregularities mentioned above or other technical deficiencies. However, the records should reflect the correct status of each employee at all times.

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Assistant General Counsel

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